Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-128**
	)	
RBOC/GTE/SNET Payphone Coalition Petition for Clarification	)	**NSD File No. L-99-34**

COMMENTS OF SPRINT CORPORATION

John E. Benedict
H. Richard Juhnke
Suite 400
401 Ninth Street, NW
Washington, DC 20004
202-585-1910

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Pursuant to the Commission's May 28, 2003 Public Notice (FCC 03-119), Sprint Corporation ("Sprint") respectfully files these comments on the *Further Notice of Proposed Rulemaking* ("FNPRM" or "Notice"). Sprint makes this submission on behalf of its business units that include a substantial payer of payphone compensation and a recipient of such compensation for tens of thousands of payphones nationwide.

I. INTRODUCTION AND SUMMARY

The rules vacated by the D.C. Circuit[1] should be replaced, not re-imposed. They are based on faulty assumptions, they are unfair and unlawful, and they function very poorly. The Commission should rethink its overall approach to Section 276.[2] The many problems associated with this docket show that the Commission should adopt a

[1] Sprint v. FCC, 315 F.3d 369, 377 (D.C. Cir. 2003), vacating payphone compensation rules codified at 47 C.F.R. §§ 64,1300, 64.1310 (2001).

[2] 47 U.S.C. § 276 (2000).

"caller-pays" rule. It is the most rational, efficient, and fair system to ensure that all completed calls are compensated to payphone owners ("PSPs").

If the Commission remains unwilling to embrace this simple solution to the payphone compensation problem, then it should at least abandon an unnatural and unworkable system that forces first-switch interexchange carriers ("FS-IXCs") to track, report, and pay on behalf of other carriers whose calls they cannot verify or track to completion. It should require that all switch-based carriers track, report, and pay for their own coinless calls. If the Commission determines that some switch-based resellers ("SBRs") were failing to comply with its regulations in the past, it should exercise its power to enforce compliance in the future, and FS-IXCs can provide data to improve PSPs' ability to collect.

If the Commission nevertheless insists on maintaining a flawed system that puts FS-IXCs in the middle between PSPs and SBRs, it should at least provide that FS-IXCs are not guarantors of payment or data, and it should allow individual FS-IXCs to set the terms, conditions, and rates for that "middleman" service, including, if they choose, the right to rely on answer supervision.

II. BACKGROUND

The Notice is part of a long and frustrating regulatory history of payphone compensation. In 1996, the Commission concluded that facilities-based carriers are "the primary economic beneficiary" of a coinless call and should be responsible for tracking calls to completion and compensating PSPs.[3] On clarification, the Commission recognized that SBRs have the capability to track payphone-originated calls and are facilities-based carriers within the meaning of the initial rule.[4] Accordingly, as facilities-based carriers, SBRs were obligated to compensate PSPs for all completed coinless calls that they handled.

In 2001, the Commission abruptly abandoned these rules and imposed new ones, shifting to FS-IXCs all obligations for tracking, reporting, and paying for coinless SBR calls, and adding new burdensome reporting requirements.[5] In making these changes, the Commission did not commence a rulemaking, did not provide notice, and did not solicit or consider comments. Nor did it open an inquiry to investigate either the claims of PSPs that it contended justified the policy change, or the impact, reasonableness, or feasibility of imposing these requirements on FS-IXCs. When FS-IXCs sought reconsideration and clarification that they could rely on answer supervision given their inability – contrary to

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[3] Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, *Report & Order,* 11 FCC Rcd 20541 at ¶ 83 (1996) (subsequent history omitted) ("1st Payphone Order"); Notice at ¶ 4.

[4] Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, *Order on Reconsideration,* 11 FCC Rcd 21233 at ¶ 92 (rel. Nov. 8, 1996) (subsequent history omitted) ("1st Recon Order"); Notice at ¶ 6.

[5] Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, *Second Order on Reconsideration,* 16 FCC Rcd 8098 (2001) ("2nd Recon Order"), rev'd & vacated by Sprint v. FCC, 315 F.3d at 377.

the claims of the order – to track SBR calls to completion, the Commission denied those requests.[6]

On January 21, 2003, in an appeal brought by Sprint, AT&T and MCI, the D.C. Circuit vacated and remanded the 2nd and 3rd Recon Orders for the Commission's "utter failure" to meet the fundamental requirements of the Administrative Procedure Act.[7] Because it granted the IXCs' petition on these grounds, the court found it unnecessary to address the merits of the IXCs' further challenge to the arbitrary and capricious character of the unlawfully issued rules. Its decision nevertheless acknowledged that the Commission had unjustifiably "assume[d], for example, that the IXCs are in a superior position to track calls," without soliciting – much less considering – appropriate evidence.[8] Likewise, "the Commission 'has offered no persuasive evidence that possible objections to its final rule[s] have been given consideration.'"[9] In other words, the court recognized that not only had the Commission failed to follow proper procedures, but it

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[6] Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, *Third Order on Reconsideration,* 16 FCC Rcd 20922 at ¶ 3 (2001) ("3rd Recon Order"), rev'd & vacated by Sprint Corp. v. FCC, 315 F.3d at 377.

[7] Sprint v FCC, 315 F.3d at 377; Notice at ¶ 2. By further court order dated April 21, 2003, the *vacatur* becomes effective September 30, 2003. The regulations adopted and clarified in those orders will then be (and will then have been) without any legal effect.

[8] 315 F.3d at 377.

[9] Id.

had foisted its policy on the industry without "adequately consider[ing]" its likely "shortcomings and burdens."[10]

The Notice, however, makes no changes to the proposed rules to address any of these shortcomings. The Commission's "tentative conclusion" to impose these rules[11] invites yet another reversal.

III. THE PROPOSED RULES ARE INEVITABLY FLAWED.

In shifting tracking, reporting, and payment obligations of SBRs from those carriers to FS-IXCs, the Commission overlooks the D.C. Circuit's instruction – in Illinois, where the court vacated and remanded payphone compensation rules governing prior periods – that a carrier cannot and should not be compelled to pay for another carrier's obligations, and certainly not on grounds of "administrative convenience."[12] Yet that is what the Notice proposes to do again.

The rules create a scheme that is arbitrary and unfair. Rather than confront SBRs for their presumed underpayment of PSPs, the rules simply force a third party – the FS-IXC – into the disputes between those two parties. The Commission attempted to rationalize this requirement, and now attempts to do so again, by assuming that the

[10] Id.

[11] Notice at ¶¶ 14-15.

[12] Illinois Public Telecommunications Association v. FCC, 117 F.3d 555, 565 (D.C. Cir. 1997), clarified on reh'g, 123 F.3d 693 (D.C. Cir. 1997), cert. denied sub nom. Virginia State Corp. Comm'n v. FCC, 523 U.S. 1046 (1998) ("Illinois").

FS-IXC is in the "best position to track" these calls to completion.[13] Yet it is impossible for FS-IXCs to determine which calls are completed by an SBR and, therefore, how much compensation is owed to PSPs.

When these rules were first imposed, IXCs sought confirmation that they could determine call completion of SBR calls using answer supervision (or, in Global Crossing's case, using call duration). The Commission refused, declaring that FS-IXCs should offer to "work with SBRs" to reconcile call tracking and somehow resolve what is an intractable problem that the Commission had failed to anticipate.[14] Even now, the Notice does not even propose to *require* SBRs to provide such information, despite the 3rd Recon Order's instruction that payphone compensation should be based on "actual" call completion.

IV. THE RISK OF SBR UNDERPAYMENT HAS BEEN EXAGGERATED.

The Commission imposed the current rules based on its assumption that PSPs were seeing serious "shortfalls" in compensation under the original rules.[15] The Notice claims no party "challenged" this assumption, and invites PSPs to comment on how the new rules affected their receipts.[16]

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[13] 2nd Recon Order at ¶¶ 15-16; Notice at ¶ 10.

[14] 3rd Recon Order at ¶ 10. See WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration; AT&T Petition for Clarification and/or Reconsideration; Global Crossing Petition for Reconsideration and Clarification (filed May 29, 2001).

[15] 2nd Recon Order at ¶ 8; Notice at ¶ 9.

[16] Notice at ¶ 13.

Sprint agrees with other carriers that PSPs exaggerated the problem under the original rules. Indeed, Sprint's experience before and under the current rules shows that the risk of nonpayment today is exaggerated. Sprint's Local Telecommunications Division includes a payphone service provider business that operates tens of thousands of payphones nationwide. Sprint's payphones include "smart phones" that allow it to capture call information to assist in evaluating payphone compensation experience.

After the 2nd Recon Order became effective and FS-IXCs began compensating for SBR calls directly, Sprint's payphone compensation receipts did increase (after adjusting for the impact of WorldCom's bankruptcy),[17] but only modestly. This is despite the significant market share of coinless calling that is attributable to SBRs – particularly prepaid calling card traffic – and despite the overpayment for SBR calls that the new rules made unavoidable. Had the shortfalls in SBR compensation been anything as bad as the PSPs have portrayed, Sprint would have seen a more significant increase. It is wrong to assume that PSP receipts would fall off drastically if the Commission required SBRs to report and pay directly, particularly if new rules provide more information to improve collection.

[17] The bankruptcy of the nation's second largest IXC naturally meant a significant temporary reduction in Sprint's payphone compensation receipts.

V. THE CURRENT RULES DO NOT "FAIRLY" COMPENSATE PSPs – INSTEAD THEY RESULT IN OVERCOMPENSATION.

The notice asks whether PSPs are being "fairly compensated" for calls routed to switch-based resellers under the vacated rules.[18] On the contrary, the new rules create conditions that ensure that PSPs are *overcompensated.*

First, the new rules shifted from PSPs to FS-IXCs the administrative costs of collection and all costs of bad debt associated with SBR calls. The costs of collection are among the usual costs of doing business; and though the Commission may take reasonable steps to minimize them, there is no reason that PSPs should be wholly exempted from them. Worse, by making FS-IXCs payment guarantors for SBR obligations, the rules also allow PSPs to escape all costs of bad debt. Sprint has typically incurred bad debt expense accounting for 8% of payphone compensation from switchless resellers. In the first five quarters under the new rules, thanks to the telecom industry's downturn and a rise in SBR bankruptcies, Sprint's bad debt experience for SBR payphone surcharges was far higher. Given the sheer volume of SBR calls, this means Sprint has been forced to pay PSPs millions of dollars annually in an unfair subsidy that PSPs have no right to expect.

Second, the new rules force FS-IXCs to compensate PSPs for large numbers of noncompleted SBR calls. Like all FS-IXCs, Sprint cannot track SBR calls to completion, but the large majority of Sprint's SBRs have found it infeasible or uneconomic to take the

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[18] Notice at ¶ 15.

steps necessary to avoid reliance on Sprint's answer supervision to determine which calls are compensated to PSPs. Many SBRs do not have payphone-originated traffic volumes sufficient to justify the costs of doing so. Even large SBRs often find it either infeasible or unduly cumbersome to create new call completion files, given incompatibility between their call tracking systems and those utilized by multiple FS-IXCs that carry their traffic. Some SBRs have been unable to meet processing deadlines or have introduced formatting or processing errors that render data unusable. And some SBRs have refused to cooperate, relying instead on their buyer's power to seek concessions from Sprint, since no Commission order compels their cooperation. Some have argued that the Commission has given Sprint no right to surcharge at all, unless the SBR expressly agrees.[19]

Sprint has no choice but to process all such SBR calls based on answer supervision, because the rules make Sprint responsible for any shortfalls in compensation. Sprint thus has been forced to overstate the number of compensable calls every quarter since these rules were imposed. The Commission itself has suggested such overpayment is "inconsistent" with Section 276,[20] but under these rules it is simply impossible to avoid.

A "fair compensation" system must also consider the impact on other parties. The notice wrongly presumes that long distance carriers can readily incur the additional costs and inefficiencies created by these rules. Long distance revenues declined by nearly 9%

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[19] SBRs have also demanded that Sprint make adjustments to payphone compensation payments to PSPs for prior periods. Although Sprint reserves that right, the Commission has failed expressly to provide for this, and PSPs have threatened litigation if it does so.

[20] 3rd Recon Order at ¶ 7.

between 2000 and 2001,[21] and the trend was likely little better in 2002. Moreover, the major IXCs (AT&T, MCI, and Sprint) are losing market share. The collective residential interLATA market share, by minutes, of the largest independent IXCs, for example, fell from 80.7% in 1999 to 58.3% in 2002 – with much of the decline attributable to gains by RBOCs, whose affiliates own the vast majority of the nation's payphones.[22] Given the pressures on the long distance industry, and especially the FS-IXCs, the Commission should be proposing more efficient and fairer approaches to implementing Section 276.

VI. FS-IXCs CANNOT SOLVE THE CALL TRACKING PROBLEMS CREATED BY THE VACATED RULES.

A. Processes to substitute SBR records for FS-IXC call completion data have worked very poorly.

The Notice asks what systems and technologies carriers have developed to manage their responsibilities under the new rules, and how FS-IXCs have imported call completion data from SBRs.[23]

The 3rd Recon Order effectively compelled FS-IXCs to develop systems to substitute SBR data for their own call completion records.[24] Sprint developed such a process, at considerable cost, and has now had a year and a half's experience. For each participating SBR, each month Sprint prepares a specially formatted file listing calls for

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[21] Industry Analysis & Technology Division, Wireline Competition Bureau, Statistics of the Long Distance Telecommunications Industry (rel. May 14, 2003) at 3 & Table 2.

[22] Id. at 4.

[23] Notice at ¶ 34.

[24] 3rd Recon Order at ¶ 3.

which Sprint received answer supervision from the SBR's switch. Using its own switch records, the SBR then compares those call records with its own tracking data to establish an alternate file of completed call records. This data file, if it is usable, is then substituted for Sprint's own data for calculating compensation for PSPs.

This may sound simple, but it is not. The volume of calls, the complexity of data, and the differences in tracking systems among carriers, make the process inevitably cumbersome. Sprint consulted with SBR customers to develop a reasonable data format and realistic deadlines for submitting the data, but neither Sprint nor its outside vendors can accommodate each SBR's needs. In addition, because the rules make Sprint responsible for SBR data, Sprint must test submitted data to assess its overall reliability. Data submissions failing to show satisfactory reliability are returned to the SBR for correction or explanation. If the SBR does not address these concerns, Sprint must reject the file and make payments to PSPs based on Sprint's answer supervision.

The process has been unsatisfactory. This system has been expensive to develop and to manage, yet few SBRs have participated. In some months, only one or two SBRs have submitted any data. In many cases – especially smaller resellers or those with relatively little payphone-originated traffic – the SBR accepts being surcharged at answer supervision, because the cost of providing tracking data exceeds the benefit. For those SBRs that have submitted call completion files, Sprint has repeatedly had problems with misformatted data, corrupted files, and submissions received too late to process. These are inevitable in a system that forces carriers with incompatible systems to try to reconcile data in tight timeframes. Sprint has also routinely been obliged to reject data that appeared unreliable.

Predictably, these problems have created disputes and collection problems. In the first five quarters under the vacated rules, Sprint recovered only 69% its payphone surcharges for SBR calls. One third of this was bad debt due to SBR bankruptcies – a cost that should be borne by the PSPs themselves. The rest of Sprint's shortfall was due to disputes by SBRs about payphone compensation issues. Because of alleged ambiguities in the rules, some SBRs challenged that FS-IXCs have any right to require cooperation with call completion data, or even to surcharge for payphone compensation at all.

Sprint's poor experience trying to "work" with SBRs thus was made worse by the Commission's failure to give FS-IXCs sufficient express rights to charge resellers for these services, to enforce compliance with reasonable requirements (including data format and delivery dates), to disconnect service for nonpayment without undue risk of litigation, to rely on answer supervision where SBRs are uncooperative, or to adjust payphone compensation payments to PSPs after the fact to correct errors. The Commission's assumption that FS-IXCs could address all concerns in "future contract negotiations"[25] has been unrealistic.

The Notice also asks how carriers are managing the problem of calls that are passed from one SBR to another.[26] Sprint cannot address this problem or even assess its

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[25] 2nd Recon Order at ¶ 18.

[26] Notice at ¶ 26.

scope, since an FS-IXC cannot "see" through the reseller switch and cannot identify calls routed to more than one SBR. This problem is thus a matter between the first SBR and its own resellers.

B. Only SBRs can track their calls to completion.

The Notice asks whether the FS-IXC or the SBR is "best-situated" to track calls to completion and thus determine whether a call is answered and therefore compensable.[27] Plainly, the last SBR in the call path is "best situated," because the FS-IXC has no ability to track beyond the first SBR's switch.

The Notice mentions a reseller group's statement "that technology exists for the IXCs to use the SS7 to determine whether a call has been completed by the switch-based reseller."[28] The claim is mistaken. For calls routed to an SBR, the FS-IXC must receive answer supervision from the SBR switch to establish a two-way call path before the SBR's customer can, for example, enter a PIN and called party number, seek operator assistance, or inquire about account balance or customer service. Redesigning networks to eliminate mandatory answer supervision from the reseller's switch and to substitute an answer supervision signal relayed by the SBR from call termination would compromise network reliability and call quality, create errors, and invite fraud. It would corrupt FS-IXC call data systems and prevent FS-IXCs from the ability to track calls that are billable to SBRs but not compensable to PSPs.

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[27] Id. at ¶¶ 27-28.

[28] Id. at ¶ 28.

C. It is infeasible to build new facilities to track SBR calls to completion.

The FNPRM asks whether it is possible for carriers to build facilities or adopt new technologies to track calls to completion when an SBR is in the call path.[29] Unfortunately, it is both technically and economically infeasible. Carriers use an incredibly diverse assortment of networks, systems, protocols, and software. Even the underlying transmission technologies are rapidly changing. Tracking and billing systems vary widely. Given the magnitude of the costs involved, it is unrealistic to expect these systems to be reconfigured or replaced to accommodate the miniscule fraction of calls that are payphone-originated.

Even assuming it were technically and economically feasible for an FS-IXC and an SBR to build a bridge between their systems, the realities of the business make this impractical. In the intensely competitive wholesale market, SBRs move traffic among multiple FS-IXCs, even on a real-time, least-cost routing basis. These same problems make it infeasible to split tracking responsibility between FS-IXC and SBR.[30]

VII. A "CONTRACT" OR "CUSTOMER" RELATIONSHIP WITH SBRs DOES NOT ENABLE FS-IXCs TO OVERCOME THE PROBLEMS INHERENT IN THE RULES.

The notice asks whether the existence of a "customer relationship" between an FS-IXC and an SBR should affect the Commission's analysis.[31] A contract relationship between FS-IXCs and SBRs only adds to the problems inherent in the vacated rules.

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[29] Notice at ¶ 28, citing Opposition of CommuniGroup (filed Oct. 9, 2001).

[30] Notice at ¶ 29.

[31] Id. at ¶¶ 29-30.

First, FS-IXCs are legally obligated under the Resale Order to provide services to SBRs.[32] FS-IXCs cannot avoid the burdens and costs imposed under these rules by opting not to do business with SBRs. In contrast, the rules give PSPs the right to reject direct payment arrangements with SBRs.[33] Second, the wholesale market is intensely competitive. FS-IXCs rely on SBRs for an increasing percentage of their network traffic. FS-IXCs simply do not have market power to set or enforce terms. SBRs can and do change carriers. FS-IXCs have no power to solve past or present problems through "future" contract provisions.[34] Third, although the Commission acknowledges that there have been many disputes between PSPs and SBRs, and that PSPs have had trouble collecting from SBRs, the rules make no provision for FS-IXCs to recover their payments to PSPs when SBRs dispute that compensation was due. Although the Commission has stated that FS-IXCs may recover their "costs" from SBRs, the proposed rules do not expressly require SBRs to reimburse or hold harmless FS-IXCs for the compensation paid on their calls.

The existence of a contract or customer relationship does not solve the problems created by the rules, and it should be no surprise that Sprint and other FS-IXCs have been unable to resolve them through contractual arrangements.

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[32] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, *Report and Order*, 60 F.C.C.2d 261 (1976) ("Resale Order").

[33] 47 C.F.R. § 64.1310(b).

[34] 2nd Recon Order at ¶ 18; Notice at ¶ 36.

VIII. THE RULES IMPOSE BURDENSOME REPORTING REQUIREMENTS THAT DO NOT ENHANCE PSPs' ABILITY TO OBTAIN FAIR COMPENSATION.

Under the original Rules, PSPs provided FS-IXCs and SBRs with lists of their payphone ANIs. The FS-IXC, the SBR, or their clearinghouses, then reported to each PSP or aggregator with the total number of compensable calls handled by the carrier from those payphones.

Under the new rules, the FS-IXC is required to "send back to each [PSP] a ... [quarterly] statement in computer readable format indicating the toll-free and access code numbers that the LEC has delivered ... and the volume of calls for each toll-free and access number each carrier has received from each of the [PSP's] payphones."[35] Breaking out and reporting completed calls in this manner increases data processing and storage costs dramatically.

This burdensome effort might begin to make sense if the PSPs continued to be responsible for collecting compensation from SBRs directly. But since the Notice proposes – and the current rules require – FS-IXCs to bear all reporting and compensation obligations, these data requirements are grossly excessive. Indeed, the Notice offers no justification for them. It is only when carriers are responsible for their own payment obligations, as they should be (and as they were under the original rules), that such detailed reporting by the FS-IXCs can be cost-justified. Even PSPs

[35] 2nd Recon Order at ¶ 18; Notice at ¶¶ 33, 42.

acknowledged that the reporting requirements were excessive with the payment obligation on the FS-IXC.[36]

IX. THE RULES MAKE CONTRACT OR CLEARINGHOUSE ARRANGEMENTS FOR DIRECT COMPENSATION BETWEEN PSPs AND SBRs IMPOSSIBLE.

A. By shifting costs and necessitating overcompensation, the vacated rules destroy any incentive for PSPs to enter into contract arrangements.

Even in an order denying reconsideration of the Commission's ill-conceived effort to make FS-IXCs responsible for SBR calls, the Commission recognized that direct arrangements between SBRs and PSPs are the "ideal" approach to tracking, reporting, and compensation for coinless calls.[37] The Notice reiterates that "the Commission has repeatedly encouraged facilities-based carriers and resellers (both switch-based and switchless) to establish private contractual arrangements with PSPs for direct billing and payment of PSPs, assuming that the PSP agrees to the contract conditions."[38] The Notice asks whether, if it "were to adopt revisions" to the vacated rules, PSPs should be allowed to "continue and to rely upon any current or future contractual arrangements that they

[36] APCC proposed to "streamline" the reporting requirements, by simply receiving per payphone call volume data broken down into four broad categories, rather than for each and every toll free and access code number. Comments of APCC (filed Oct. 9, 2001) at 6-11.

[37] 3rd Recon Order at ¶ 11.

[38] Notice at ¶ 43.

may have with underlying facilities-based carriers or resellers."[39] The notice also asks whether PSPs and SBRs have entered these arrangements and found them satisfactory.[40]

To Sprint's knowledge, there are no direct contractual arrangements between PSPs and carriers, because the rules destroyed all incentive for PSPs to entertain them. PSPs have no reason to contract directly with SBRs, because the latter cannot refuse to accept calls from their payphones and thus have no leverage to negotiate anything. Selective call blocking on the necessary scale would impose costs on the long distance industry in nine figures. PSPs have a positive incentive *not to contract* with SBRs, because the rules shift their own business costs for SBR calls to the FS-IXC. PSPs like the "administrative convenience" of being able to seek payment from a relative handful of FS-IXCs, rather than a much larger number of smaller SBRs. PSPs also prefer being insulated from the bad debt risk of SBRs, which traditionally has been far higher than that of FS-IXCs. Additionally, by refusing to accept direct contractual arrangements, PSPs ensure that a significant portion of SBRs calls will be *over*compensated, because of the problems for FS-IXCs and SBRs inherent in attempting to import call completion data. Naturally, by poisoning any opportunity for direct arrangements, the rules also make clearinghouse arrangements impossible.

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[39] Id.

[40] Id. at ¶ 26.

B. The vacated rules ignore the inability of FS-IXCs to accommodate direct arrangements between individual PSPs and SBRs.

Even if one assumed that PSPs were to enter into some direct payment arrangements, the Notice ignores the infeasibility of requiring FS-IXCs to monitor such direct arrangements. Unless an SBR entered into "direct arrangements" with every PSP, FS-IXCs would have to determine which calls handed off to that SBR were subject to such arrangements. Otherwise, the PSP would be paid twice for the same call.

FS-IXCs are totally dependent on the SBRs to provide notice of these arrangements, and there is no reason to assume that FS-IXCs can be assured of accurate and timely notice of all direct arrangements. Regardless, there is no feasible way that a compensation system could effectively track them. It would require each FS-IXC to create a database containing the combination of every payphone number and every access number involved in a direct arrangement, and updating it daily. That would be an administratively impossible burden for FS-IXCs since, once again, they would be wholly dependent on the accuracy of data from persons they do not control.

X. THE COMMISSION SHOULD ABANDON THE PROPOSED RULES FOR A MORE SENSIBLE ALTERNATIVE.

A. The Commission should adopt a "caller-pays" approach.

Throughout the payphone proceedings, Sprint has advocated a market-based approach to payphone compensation.[41] A caller-pays plan allows the PSP, if it chooses, to assess a charge directly on the caller for the use of the payphone for an access code or

[41] See, e.g., Sprint's Opposition to Petitions for Rulemaking RM 10568 (filed Oct. 29, 2002); Comments of Sprint Corporation (filed July 13, 1998).

subscriber 800 call. The caller-pays approach is the most rational and efficient, not least because – as with local calls – it links the price for the service to the calling party's choice of when, where, and whether to make a call. It is the only means of providing accurate market signals to PSPs and to promote a realistic, sustainable deployment of payphones, particularly in light of the continuing decline in payphone usage.

It is disappointing that the Notice fails even to mention the caller-pays plan, because an additional benefit of the caller-pays approach is that all of the very substantial costs and inefficiencies of coinless call tracking, reporting, and compensation are avoided. The caller-pays approach also avoids the inevitably artificial and market-distorting Commission-set rates for coinless calls. Some PSPs have resisted this approach because they prefer a regulatory regime that guarantees an artificially set price while protecting them from the realities of the marketplace that other service providers face. But there is no reason that a caller cannot be expected to pay a modest direct rent for the use of a payphone, even for an access call or a call for which the long distance charges are paid by a third party.

In the 3rd Report and Order in 1998, the Commission theorized that Congress may disapprove of a caller-pays system[42], but has acknowledged that it may "form[] the basis of the purest market-based approach."[43] The Commission concluded back then "that we

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[42] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Third Report and Order, and Order on Reconsideration of the Second Report and Order,* 14 FCC Rcd 2545 (1999) (subsequent history omitted) at ¶ 115.

[43] Id.

should monitor the advancement of call blocking technology and any accompanying marketplace developments before reconsidering a caller-pays compensation approach."[44] Sprint believes the Commission should do so now, rather than open yet another chapter in the sorry history of payphone compensation since 1996.

B. If the Commission does not adopt a "caller-pays" system, it should adopt revised rules by which all switch-based carriers are responsible for their own tracking and compensation obligations.

If the Commission nevertheless insists upon continuing an artificial, non-market-based payphone compensation regime, it should not re-impose the rules that the court has already once vacated. The Commission should correct the problems in the original rules, while requiring each switch-based carrier to track and report and pay for its own dial-around calls.

"Reform of the system"[45] does not necessitate shifting the problem to FS-IXCs. Rather, the Commission can address the source of the problem. The Notice "conclu[des] that a major source of the shortfall resulted from the lack of information available to PSPs and the fact that the PSP compensation framework as it existed prior to the 2nd Recon Order left PSPs in the position of being dependent on switch-based resellers to identify themselves voluntarily as responsible for paying dial-around compensation."[46]

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[44] Id.

[45] Notice at ¶ 14.

[46] Id. at ¶ 13, citing 2nd Recon Order at ¶ 15.

The Commission can remedy this "lack of information" without imposing the rules as proposed. The Commission also has the power to ensure that SBRs fulfill their obligations directly and could provide greater penalties for actual noncompliance.

Sprint suggests that the Commission could direct FS-IXCs to provide to PSPs, upon request, quarterly reports in electronic format to assist PSPs' own collection efforts. These reports would provide current SBR contact information, listing that SBR's toll free subscriber and access code numbers, and identifying volumes, based on answer supervision, of calls routed from individual payphone ANIs to each of those SBR numbers. FS-IXCs would continue to track, report, and pay for switchless reseller calls, since those carriers have no ability to track their own calls.

This data report would not calculate the actual amount of compensation owed by the SBR for calls routed on the FS-IXC's network. As Sprint has already explained, FS-IXCs do not have that information and cannot reconcile SBR call completion data with their own. But this information would give the PSP a solid baseline for assessing the thoroughness of each SBR's tracking, reporting, and compensation to that PSP's payphones. The PSP also could reprocess the data, or arrange for reprocessing of the data, in combination with similar call tracking data required from the SBR. This would allow the PSP to evaluate very effectively the reliability of the reporting, and the completeness of the compensation, it is receiving from that SBR. For smaller PSPs for whom such tasks may be inconvenient, there are associations and contractors that can assume these tasks for them, just as many PSPs currently utilize aggregator associations to manage today's payphone compensation processes. PSPs could also band together, as many already have, for purposes of enforcement.

This approach has advantages of minimizing the FS-IXC's unworkable middleman role, freeing it from the unfair and unjust role of guarantor, and complying with the Illinois court's mandate that one group of carriers must not be compelled to pay the obligations of another, and certainly not simply for administrative convenience.[47] The costs of providing these reports, though not insubstantial, would be borne by the FS-IXCs and recovered, to the degree market conditions allow, by their wholesale rates, avoiding additional surcharges for SBRs and eliminating an area of chronic disputes.

This approach also ensures fair compensation for each and every completed call. To the extent that PSPs may be unable to collect from those SBRs who may close their doors or reorganize under bankruptcy, those risks and costs are a normal part of doing business.

C. If the Commission insists on re-imposing the flawed rules, it should reduce their unfairness and burdens on FS-IXCs and the inefficiencies they place on the wholesale market.

If the Commission insists on adhering to these rules, despite the likelihood of reversal, then the Commission should at the very least take steps to address some of the key problems in the rules.

First, the Commission cannot fairly shift costs of bad debt from PSPs to SBRs. The rules should provide that FS-IXCs are not guarantors of payment. If Sprint does not collect from an SBR, Sprint should not be compelled to pay PSPs on its behalf.

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[47] Illinois, 117 F.3d at 565.

Second, since integrating SBR and FS-IXC data is infeasible, and in light of the costs and disputes associated with attempts to substitute SBR for FS-IXC call completion data, the Commission should expressly allow FS-IXCs to utilize answer supervision as a basis for all reporting and surcharging of SBR calls. Those FS-IXCs that choose to offer SBRs a process for importing the reseller's data should be free to set their own requirements for the service, including the specified data format, schedule, and a market rate for the service. Those FS-IXCs that offer the best arrangements will attract more SBR business.

Third, since FS-IXCs do not have visibility through a reseller's switch and cannot verify the accuracy of SBR call completion data, the rules should provide that FS-IXCs are not liable for errors or omissions in SBR data in the event that FS-IXCs substitute it for their own. FS-IXCs have no incentive to allow their SBR competitors to shirk their payphone compensation obligations, and there is no reason that FS-IXCs should be held responsible for SBR data.

Fourth, given the number of PSPs and SBRs, and the immense number of payphone ANIs and SBR access numbers, the Commission should allow FS-IXCs to require that an SBR entering direct or clearinghouse arrangements with PSPs do so for all PSPs.

Lastly, if FS-IXCs are to be responsible for handling payphone compensation for other carriers, the Commission should expressly confirm their right to make adjustments in payphone compensation at any time to correct overpayments or errors.

XI. CONCLUSION

The experience of the long distance industry since November 2001 shows that the vacated rules are unworkable, unfair, inefficient, and bound to be reversed. Sprint encourages the Commission to consider seriously the efficiency, simplicity, and fairness of a caller-pays approach to payphone compensation. If the Commission declines that approach, then it should make each carrier responsible for its own obligations, with additional reporting from FS-IXCs to assist PSPs in collecting from FBRs. If the Commission insists on re-imposing the vacated rules, however, FS-IXCs must not be guarantors of SBR payment or data, and FS-IXCs should have flexibility in handling SBR calls, including the option to rely on answer supervision.

Respectfully submitted,

SPRINT CORPORATION

By ______________________

John E. Benedict
H. Richard Juhnke
Suite 400
401 Ninth Street, NW
Washington, DC 20004
202-585-1910

June 23, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Corporation in CC Docket No. 96-128 and NSD File No. L-99-34 was delivered by electronic mail on this 23rd day of June 2003 to the parties listed below.

Sharon Kirby

Sharon Kirby

ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

VIA E-MAIL

Jeffrey Carlisle
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michelle Carey
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Tamara Preiss
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Qualex International
Portals II
445 12th Street, SW, Rm. CY-B402
Washington, DC 20554